

AR-15 DROP-IN AUTOSEARS

By James H. Jeffries, III

A Californian recently called a knowledgeable acquaintance of mine inquiring about an unsolicited handbill the Californian had just received in the mail which advertised the sale of drop-in autosears "AR15 to M16" for \$120 each (2 for \$109 each). The sears, stated the handbill, were "pre-November 1981 (with documentation)" and guaranteed to be 100% legal as well as "select-fire (allows semi-auto & full-auto operation)." Further, reassurance was given that "For your privacy we keep no names, addresses, mailing lists, shipping records, invoices, etc."

Both my acquaintance and the Californian sensed that something was wrong here; their sense of smell is in perfect working order. This handbill -- later appearing in slightly less provocative language in the October 1, 1996 edition of Shotgun News (p. 96) -- was sent by someone/something named "TPF" with a one-eight hundred telephone number and a post office box in Arlington, Virginia.

As near as I can figure "TPF" stands for "To Prison Fast." This ad is an open invitation to a 10-year, \$10,000 felony (18 U.S.C. section 922(o); 26 U.S.C. sections 5861, 5871). Indeed, its transmission through the United States mails is probably postal fraud (18 U.S.C. sections 1341, 1342). In fact, the handbill is so blatant an invitation to commission of a crime that I was immediately reminded that Arlington, Virginia, is only a few miles from BATF's national headquarters in the District of Columbia as well as two of its criminal law enforcement field offices (D.C. and Falls Church, VA). In short, this is either a not-very-bright felon looking for company to join him at a rent-free federal facility or it is a not-very-sophisticated (that is to say, typical) BATF sting operation.

Some legal history: Before the amendments to the National Firearms Act of 1934 by the Gun Control Act of 1968, a machinegun was (1) a weapon that went bang more than once with a single pull of the trigger. IRS also took the position in court, sometimes successfully, that a machinegun was (2) a collection of parts that could be readily assembled into a machinegun. In 1968, Congress enlarged the statutory definition of machinegun (26 U.S.C. section 5845 (b)) to specifically include a collection of parts as well as (3) the frame or receiver of a machinegun and (4) any part or collection of parts which would convert a semiautomatic firearm into a machinegun. This meant that auto-sears, full-auto trigger packs, slotted bolts, conversion kits, etc., now had to be registered under the NFA as machineguns.

Given the wide range of semiautomatic firearms on the market and the ingenuity of the American gun culture, it was sometimes difficult technically to identify those specific items which constituted a conversion part or kit. However, apart from the technical identity problem, it was clear that such items were registerable machineguns in and of themselves. (If the semiautomatic receiver had to be permanently modified to accept the conversion part(s), then BATF took the position that the registered

sear had to be permanently married to the receiver -- otherwise when you removed the conversion part from the weapon you ended up with two machineguns, a machinegun frame or receiver and a machinegun conversion part, one of which was unregistered.)

One of the most popular conversions has always been from the AR-15 semiautomatic rifle to the fully-automatic M16. This is done either by the simple insertion of a "lightning link" over the bolt, which by simulating the M16 sear permits only full-automatic fire, or by the installation of five M16 parts (bolt carrier, selector, trigger, disconnecter and hammer) and the addition of a 15 piece of steel called a "drop-in autosear" which delays the fall of the hammer sufficiently to cycle the weapon automatically. (Actually, most knowledgeable shooters can get an AR-15 with M16 parts to cycle more than once on a single trigger pull without the addition of the drop-in sear the so-called soft primer or "slam-fire" problem -- but this is neither safe nor reliable without the addition of the drop-in sear. Essentially, all six parts are needed to convert the AR-15, but many after-market AR-15s have M16 parts in them, often without the knowledge of the owner, simply because of the ready availability of M16 parts. Rather than decree the entire combination of six parts a machinegun conversion kit (as, for example, was done with the M1/M2 U.S. Carbine conversion kit), BATF finally, in November 1981, ruled that the drop-in autosear was the registerable part (BATF Ruling 81-4, 1981-3 ATFB 78). For arcane reasons related to the legal retroactivity of tax matters, however, only autosears manufactured after November 1, 1981, were required to be registered. Thus, under the metaphysics of the National Firearms Act, two identical pieces of steel manufactured a day apart now had two different legal statuses. One was a legally regulated machinegun required to be registered with BATF; the other remained an innocuous 15 piece of steel.

The fact that two physically identical autosears can have a different legal identity has given rise to a very dangerous situation in the Title II firearms community. Possessing an unregistered post-November 1981 autosear is possession of an unregistered machinegun. Possession of a pre-November 1981 autosear is simply possession of a 15 piece of steel unless you also possess an AR-15 with M16 parts. Then you are also in possession of an unregistered machinegun.

In short, the only AR-15 autosears worth \$120 are those which were registered with BATF before the May 19, 1986, ban on further production of privately owned machineguns (18 U.S.C. section 922(o)). Any other autosears are not only worthless commercially, but will constitute possession of an unregistered machinegun if found (by a jury) to have been manufactured after November 1, 1981. Assuming you had no incriminating AR-15 with the tell-tale M16 parts, how would you prove your autosear was one of the pre-November 1981 curiosities? By a "letter of authentication" supplied by a merchant engaged in a patently illegal solicitation? Right. I am unaware of any forensic test which can establish that the date of production of an autosear was prior to November of 1981. But a BATF toolmark examiner could easily establish that it was milled on a specific machine which did not exist in 1981. Keep in mind also that even if you had irrefutable proof of the pre-1981

provenance of your sear, the only thing that keeps it from being an unregistered machinegun is a unilateral (and not very logical) 1981 ruling by BATF which it could revoke tomorrow. In other words, you are not legally protected by a statute or a Treasury Regulation, but rather by an internal ruling by BATF which does not have the force of law and which can be changed in a heartbeat.

There can be only one reason for possessing one of these unregistered autosears, and BATF knows what that reason is. This is not a theoretical discussion. BATF investigates these cases vigorously and the Department of Justice prosecutes them with equal vigor. Avoid these overpriced paperweights if you value your freedom.

[The author is a retired U.S. Department of Justice lawyer and a retired colonel in the Marine Corps Reserve practicing firearms law in Greensboro, NC. He is a 1959 graduate of the University of Kentucky and a 1962 graduate of the UK College of Law, where he was Note Editor of the Kentucky Law Journal.]